

SENATE BILL REPORT

SB 5136

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, January 28, 2009

Title: An act relating to the use of solar energy panels by members of homeowners' associations.

Brief Description: Regulating the use of solar energy panels by members of homeowners' associations.

Sponsors: Senators Hobbs, Rockefeller, Fairley, Tom, Marr, Fraser, McDermott, Shin, Sheldon, McAuliffe, Jacobsen, Kline and Hatfield.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/21/09, 1/28/09 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5136 be substituted therefor, and the substitute bill do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Benton, Ranking Minority Member; Franklin, Parlette and Schoesler.

Staff: Philip Brady (786-7460)

Background: Homeowners' associations generally levy and collect assessments, manage and maintain common property for the benefit of the residents, and enforce covenants that govern developments. The authority to carry out these functions comes from governing documents such as the declaration of covenants, conditions, and restrictions.

Restrictive covenants are recorded in property deeds and may regulate such broad issues as the architectural designs of homes, schemes of landscaping, the size of mailboxes, and the placement of satellite dishes or antennas. A person who purchases property within a subdivision governed by a homeowner's association and subject to restrictive covenants becomes a member of the association and generally must abide by the restrictive covenants.

Summary of Bill (Recommended Substitute): Homeowners' associations' governing documents may not prohibit the installation of solar energy panels by an owner or resident on the owner's or resident's property, as long as it meets applicable health and safety standards and other requirements determined by the type of solar panel. Solar water heaters must be

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certified by a nationally recognized certification agency, and electricity-producing solar panels must meet certain safety and performance standards, including those set by the national electric code, accredited laboratories, and rules of the utilities and transportation commission for safety and reliability.

The governing documents may include some reasonable rules and regulations regarding the placement and aesthetic impact of solar energy panels, including restricting visibility, requiring painting, or requiring shielding of a ground mounted panel if doing so is economically feasible and does not reduce operating quality by more than 10 percent. The governing documents may also require owners or residents installing solar panels to indemnify or reimburse the association or its members for any loss or damage caused by installation, maintenance, or use of the solar panel, and may restrict or prevent installation of solar panels in common areas.

This prohibition applies retroactively and renders any inconsistent section of an existing homeowner's association's governing documents void and unenforceable.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): Homeowners' associations may require owners or residents who install solar panels to indemnify or reimburse the association or its members for damages arising from installation, use, or maintenance of the solar panel. Previously, "installers" of solar panels could be required to indemnify the association.

Homeowners' associations may restrict or prevent the installation of solar panels in common areas.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill is appreciated because it doesn't impose directives and won't increase the price of housing.

OTHER: The bill is generally well drafted, but there should be an explicit provision that homeowners' associations may still prohibit solar energy panels where the homeowners' association has sole responsibility for maintenance of the installation location. Some homes also have flat roofs where the top edge of the panel cannot be level with the roof ridge, and the bill should be amended to address that.

Persons Testifying: PRO: Bob Mitchell, Washington Realtors.

OTHER: Kathryn Hedrick, Jeremy Stillwell, Community Associations Institute, Washington State Branch; Richard Frank, citizen.